STATE OF MICHIGAN

COURT OF APPEALS

ROBERT P. WRIGHT and ANN MARIE WRIGHT, Plaintiffs-Appellees/Counter-Defendants, v RICHARD W. PARRY and LOIS E. PARRY, Defendants-Appellants/Counter-Plaintiffs, and DAVID B. PARRY, FRANCINE PARRY and MICHAEL L. GLENN, a/k/a MICHAEL L. GLEN, Defendants, and MARY C. WRIGHT and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., Third-Party Defendants.	UNPUBLISHED March 23, 2010 Nos. 288786; 289412 Oakland Circuit Court LC No. 2007-085150-CZ

Before: BORRELLO, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

In Docket No. 288786, defendants Richard and Lois Parry[1] appeal as of right a judgment in favor of plaintiffs Robert and Ann Marie Wright in the amount of $47,321.50. In Docket No.

[1] References to defendants are to Richard and Lois Parry, unless other defendants are specifically (continued…)

289412, defendants appeal as of right an order awarding plaintiffs case evaluation sanctions in the amount of $41,699.75, as well as costs and interest.[2] For the reasons set forth in this opinion, we affirm in Docket No. 288786. In Docket No. 289412, we vacate the award of case evaluation sanctions and remand for the trial court to conduct an evidentiary hearing as required by *Reed v Reed*, 265 Mich App 131; 693 NW2d 825 (2005), and to make a determination of reasonable attorney fees under MCR 2.403 and consistent with *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008).

I. FACTS AND PROCEDURAL HISTORY

The dispute in this case concerns an express easement benefitting plaintiffs' property, which is an approximately one-acre parcel located at 707 Brandt Road in Ortonville, MI. Defendants originally owned the benefitted property as part of a larger parcel of property. Ronald R. Rosser and Donna Grigiski purchased 707 Brandt Road from defendants in November 1988. 707 Brandt Road was landlocked, with no access to Brandt Road. Before Rosser and Grigiski purchased the property, they entered into a memo of understanding with defendants, which provided: "3. Driveway: A separate indenture addresses ingress/egress. However, the Sellers [defendants] reserve the right to relocate the driveway at the Sellers[']s expense should they decide to do so at some later date." When Rosser and Grigiski purchased 707 Brandt Road, defendants granted Rosser and Grigiski an express "irrevocable easement for driveway purposes over and across the driveways and access drives located on the property . . . ." The purpose of the easement was

> to provide access from the property . . . to Brandt Road. It shall run with, and be appurtenant to this property and shall be binding upon the heirs, executors, administrators and assigns of the undersigned as the holders of legal title to the lands above described; provided, however, that if a public road is opened affording such access, this easement shall terminate.

The express easement contained a legal description of the servient estate, but it was not described with a commonly known as address. At the time of the granting of the express easement, defendants owned 25 acres of land at 777 Brandt Road. However, defendants later subdivided and sold some of the property, although they retained a portion that continued to be known as 777 Brandt Road. At the time of the granting of the express easement, there was a driveway over 777 Brandt Road to provide the landlocked 707 Brandt Road access to Brandt Road. This driveway, which the parties refer to as the 1988 driveway, was located primarily on what would later become, after defendants subdivided the land, 667 Brandt Road, which defendants David and Francine Parry purchased from defendants in 2001, and 677 Brandt Road, which was owned by defendant Michael Glenn.

(…continued)

named.

[2] This Court consolidated defendants' appeals "to advance the efficient administration of the appellate process." *Wright v Parry*, unpublished order of the Court of Appeals, entered April 2, 2009 (Docket Nos. 288786; 289412; 289514).

In 1991, defendants entered into a consent judgment regarding the dominant estate, 707 Brandt Road. According to defendants' brief on appeal, the consent judgment was the result of an action brought by Groveland Township "to ensure that the one-acre parcel at 707 Brandt Road would not be landlocked in the future." The consent judgment included the following provision:

> (11) There shall always be access to the Subject Lot from Brandt Road. The easement which was granted by the Parrys' [sic] to Ronald Rosser and Donna Grigiski shall be re-recorded and shall run with the land. Such easement grants current access to the Subject Lot over existing driveways from Brandt Road across the Parry property. The existing easement shall run with the land even if title to the subject lot is returned fully to Richard W. Parry and Lois E. Parry.

In 1999, defendants relocated the driveway easement from the 1988 driveway to the portion of 777 Brandt Road that they retained after they subdivided the property. The parties refer to this second driveway easement as the 1999/2000 driveway. The second driveway was constructed by filling in wetlands, cutting out trees and filling it with gravel. It was completed in the fall or early winter 1999, and defendant Richard Parry did some additional work on it in the spring and summer of 2000.

In September 2000, plaintiffs purchased ten acres of property at 760 Grange Road; this property was contiguous to Rosser and Grigiski's one-acre parcel at 707 Brandt Road. Six years later, in 2006, plaintiffs purchased 707 Brandt Road from Grigiski and her then-husband (not Rosser).

In August 2007, plaintiffs filed a complaint against defendants Richard and Lois Parry, David and Francine Parry and Michael Glenn seeking to enforce the easement. Plaintiffs' complaint sought a restraining order to prevent defendants from violating the easement and the consent judgment. Plaintiffs also sought an injunction to prevent defendants from obstructing or preventing plaintiffs from accessing Brandt Road by the original driveway easement over defendants David and Francine Parry's property on 667 Brandt Road and defendant Michael Glenn's property on 677 Brandt Road. The complaint also contained a claim for breach of contract and a negligence claim. The complaint sought to recover damages for repairs to plaintiffs' vehicle for damage caused by their use of the 1999/2000 driveway over 777 Brandt Road, damages of $350,000 for "physical and mental disablement" and damages of $500,000 for defendants' gross negligence.

On about January 10, 2008, the trial court entered an order that, among other things, dismissed plaintiffs' case against defendants David and Francine Parry because plaintiffs failed to perfect service against them.

In an apparent attempt to avoid the effect of the dismissal of the case against defendants David and Francine Parry, plaintiffs filed a second complaint against defendants David and Francine Parry on about January 24, 2008. The second complaint was based on the same allegations asserted in the first complaint. The complaint asserted that defendants David and Francine Parry's property carried the burden of the easement benefitting plaintiffs' property and sought an injunction and damages. On January 29, 2008, the trial court, apparently unaware that plaintiffs had already filed a similar complaint against defendants David and Francine Parry that had been dismissed due to lack of proper service, granted a preliminary injunction preventing

defendants David and Francine Parry "from engaging any action or inaction that intentionally or unintentionally obstructs, hinders or in any way prevents Plaintiffs from having safe access to their property located at 707 Brandt Road via the drives and driveways on 667 Brandt Road as described in the Grant of Easement and subsequent Consent Judgment." Two days later, on January 31, 2008, the trial court revoked the preliminary injunction. Plaintiffs' second complaint against defendants David and Francine Parry was ultimately dismissed.

Case evaluation occurred in April 2008. A case evaluation award of $20,000 was entered in favor of plaintiffs. Plaintiffs accepted the award, but defendants rejected it.

There was a jury trial on the issue of defendants Richard and Lois Parry's tort liability and liability for breach of contract. Right before trial, plaintiffs struck their demand for damages of $500,000 for defendants' gross negligence. The jury found that a contract existed and that defendants breached the contract. The jury awarded plaintiffs damages in the amount of $45,000 for breach of contract. The jury found that defendants were not liable for negligence.

Following the jury's verdict, plaintiffs moved for case evaluation sanctions pursuant to MCR 2.403. The trial court awarded plaintiffs case evaluation sanctions in an order entered November 24, 2008.

On December 17, 2008, the trial court entered an order granting plaintiffs a permanent injunction and ordering defendants not to interfere "with Plaintiffs' easement access over the '1999/2000 Driveway[.]'"

II. ANALYSIS

A. INJUNCTION

Defendants[3] argue that the trial court erred in granting plaintiffs a permanent injunction restraining them from interfering with plaintiffs' easement over the 1999/2000 driveway on their property at 777 Brandt Road. According to defendants, plaintiffs' original complaint sought passage over defendants David and Francine Parry's property at 667 Brandt Road and Michael Glenn's property at 677 Brandt Road, not over defendants Richard and Lois Parry's property at 777 Brandt Road. Thus, defendants assert, plaintiffs' post-trial request for injunctive relief constituted an improper attempt to amend the complaint to add a new claim. Defendants also argue that the injunction is barred by res judicata and MCR 3.310(G)(1).

This Court reviews a trial court's grant of injunctive relief for an abuse of discretion. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 105; 662 NW2d 387 (2003). Although the decision to grant injunctive relief is within the sound discretion of the trial court, the decision must not be arbitrary, and it must be based on the facts of a particular case. *Id.* at 105-106. The abuse of discretion standard recognizes "'that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and

[3] Defendants appeared in propria persona during many of the lower court proceedings.

principled outcome.'" *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

We first address defendants' argument that by granting the injunction, the trial court effectively permitted plaintiffs to amend their complaint to add a new claim. We find that the trial court did not, in granting the injunction, effectively permit plaintiffs to add a new claim to their complaint because the complaint, as drafted, was sufficient to provide reasonable notice to defendants Richard and Lois Parry that plaintiffs were seeking an injunction to enforce the express easement that defendants Richard and Lois Parry granted when they originally sold 707 Brandt Road. Michigan does not require extreme formalism regarding pleadings. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). A complaint must provide reasonable notice to an opposing party regarding the nature of the claims that are being brought against it. MCR 2.111(B)(1); *Dacon*, 441 Mich at 329. In this case, plaintiffs' complaint was, among other things, an action to enforce an express easement allowing them to access their landlocked property at 707 Brandt Road. This express easement was originally granted by defendants when they owned a large parcel of property that included 667 Brandt Road and 677 Brandt Road, the property over which the original driveway easement (the 1988 driveway) was located. Furthermore, the complaint specifically mentioned defendants Richard and Lois Parry in its claim for injunctive relief. Even if plaintiffs' complaint did not specifically seek an injunction preventing defendants Richard and Lois Parry from blocking the 1999/2000 driveway on 777 Brandt Road, plaintiffs' complaint was sufficient to provide reasonable notice to defendants Richard and Lois Parry that plaintiffs were seeking to enforce the express and irrevocable easement that they granted in 1988 and which continued to burden property retained by them after they subdivided and sold off portions of the original 777 Brandt Road.

We need not address defendants' res judicata argument because issues not raised before and addressed by the trial court are not preserved for review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Defendants also argue that MCR 3.310(G)(1) precludes the trial court's injunction in this case. MCR 3.310(G)(1) provides: "If a circuit judge has denied an application for an injunction or temporary restraining order, in whole or in part, or has granted it conditionally or on terms, later application for the same purpose and in relation to the same matter may not be made to another circuit judge." According to defendants, the injunction violates MCR 3.310(G)(1) because plaintiffs' complaint against defendants David and Francine Parry, which sought an injunction, was dismissed.

There is a dearth of case law interpreting MCR 3.310(G)(1). The one case addressing the court rule is an unpublished opinion issued by this Court. In *City of Warren v Executive Art Studio*, unpublished opinion per curiam of the Court of Appeals, issued February 13, 1998 (Docket No. 197353), this Court ruled that MCR 3.310(G)(1) did not prevent the issuance of an injunction when a previous injunction, conditionally granted, had been issued as to the same property, but against a different party. In the instant case, the properties at issue and the parties are both different. The trial court's preliminary injunction, which was dismissed two days later, and subsequent dismissal of plaintiffs' complaint against David and Francine Parry, involved 667 Brandt Road. The injunction in the present case involved defendants Richard and Lois Parry

and their property at 777 Brandt Road. Therefore, MCR 3.310(G)(1) does not bar the injunction prohibiting defendants Richard and Lois Parry from interfering with the easement over 777 Brandt Road.

B. NEW TRIAL AND JUDGMENT NOTWITHSTANDING THE VERDICT

Defendants argue that the trial court erred in denying their motion for JNOV and their motion for new trial. According to defendants, there was no evidence that they blocked the 1988 driveway, so there was no breach of contract. Defendants also contend that there were errors with the jury's damages award for breach of contract.

This Court reviews de novo a trial court's decision on a motion for JNOV. *Livonia Bldg Materials Co v Harrison Constr Co*, 276 Mich App 514, 517; 742 NW2d 140 (2007). This Court must view the evidence and all legitimate inferences in the light most favorable to the nonmoving party to determine whether a question of fact existed. *Id.* at 517-518. Only if the evidence failed to establish a claim as a matter of law is JNOV appropriate. *Id.* at 518. This Court reviews for an abuse of discretion a trial court's denial of a motion for a new trial. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595; 708 NW2d 749 (2005).

To establish a breach of contract, a plaintiff must establish both the elements of a contract and a breach of the contract. See *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990). A valid contract requires parties competent to contract, a proper subject matter, legal consideration, and a mutuality of agreement and obligation. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). The plaintiff must then establish the breach of the contract and damages resulting from the breach. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). The party asserting a breach of contract has the burden of proving his damages with reasonable certainty and may recover only those damages which are the direct, natural and proximate result of the breach. *Id.*

Defendants do not challenge the existence of a valid contract,[4] but argue that plaintiffs failed to establish a breach of contract because they did not provide evidence that defendants Richard and Lois Parry blocked the 1988 driveway. Defendants' argument incorrectly presumes that the only way defendants could have breached the easement and/or consent judgment is by blocking the 1988 driveway. However, defendants also breached the easement and/or consent judgment if they interfered with plaintiffs' access to the 1999/2000 driveway. The express easement, which was created in 1988, applied to "the driveways and access drives located on . . . [defendants Richard and Lois Parry's] property . . . ." At the time defendants granted the express easement, their property, 777 Brandt Road, also encompassed 667 Brandt Road and 677 Brandt

[4] Two documents arguably support a contract claim in this case. The first document is the express easement granted by defendants Richard and Lois Parry to Rosser and Grigiski. By its terms, the express easement was irrevocable and ran with the land. The second document is the 1991 consent judgment that defendants Richard and Lois Parry entered into with Groveland Township, and this document also contains language stating that "[t]he easement . . . shall run with the land."

Road, because defendants had not yet subdivided the property. Although the 1988 driveway is located primarily on 667 Brandt Road and 677 Brandt Road, the 1999/2000 driveway is located on the portion of 777 Brandt Road retained by defendants Richard and Lois Parry, and this property was included in the express easement. Therefore, evidence that defendants Richard and Lois Parry blocked or otherwise impeded plaintiffs' access to the 1999/2000 driveway would also support a finding of breach of contract.

At trial, plaintiff Robert Wright testified that defendant Richard Parry attempted to block the 1999/2000 driveway by cutting down trees and dragging the trees in a manner as to block the driveway. According to plaintiff Wright, defendant Richard Parry's conduct did not prevent him from using the easement. In addition, defendant Richard Parry wrote a letter to plaintiffs on January 12, 2008, reminding them that they had been notified that they were "forbidden to continue trespassing on my driveway" and that he had requested that plaintiffs "identify a reasonable plan for getting access to the 707 Brandt Road property via traversing your own property." The letter, which was admitted as evidence at trial, threatened to charge plaintiffs with criminal trespass if they continued to use his property:

> I repeat; Pursuant to MCLA 750.552; MSA 28.820(1) you are forbidden to enter or cross my property commonly known as 777 Brandt Road; and you are notified that you must stop using my driveway to access your property. You simply no longer have any legal authority to do so. I am informed that the penalty for trespass after notification is, "***imprisonment in the county jail for not more than 30 days or by a fine of not more than $50.00, or both***", and that each infraction constitutes a new charge. [Emphasis in original.]

Contrary to defendants' argument on appeal, there is evidence to support the jury's finding that defendants Richard and Lois breached the express easement and/or the consent judgment because they attempted to block plaintiffs' access to the 1999/2000 driveway and attempted to prohibit them, in writing, from accessing their property at 777 Brandt Road by threatening them with criminal trespass. Thus, there is sufficient evidence to support a finding of breach of contract.

Defendants' next argument concerns the jury's award of $45,000 in damages for plaintiffs' breach of contract claim. Defendants assert that the damages were not connected to any alleged breach of contract because they include damages for pain and suffering, which are not recoverable in a contract action. At trial, counsel for plaintiffs requested damages of $40,000 for plaintiffs' breach of contract claim. There was also evidence that plaintiff Ann Wright incurred repair costs to her vehicle in the amount of $4,500 to $5,000 after she had an accident while driving on the 1999/2000 driveway. The trial court awarded plaintiffs damages of $45,000.

Defendants' argument that the jury's damages award included damages for pain and suffering is pure speculation. The record simply does not support defendants' claim that the jury awarded damages for pain and suffering. It is true that counsel for plaintiffs suggested damages in the amount of $35,000 for plaintiff Ann Marie Wright's pain and suffering. However, the jury rejected plaintiffs' negligence claim, and the jury's verdict, as stated on the record, indicates that the award of damages was for breach of contract. The damages awarded by the jury are consistent with the damages sought by plaintiffs for breach of contract, plus $5,000 for the

damage to plaintiffs' vehicle. There is no indication on the record that the jury was confused regarding plaintiffs' request for damages for breach of contract or regarding whether damages for pain and suffering were recoverable in a breach of contract action.

Defendants also argue that plaintiffs did not prove their damages with reasonable certainty. The party asserting a breach of contract has the burden of proving her damages with reasonable certainty and may recover only those damages which are the direct, natural and proximate result of the breach. *Alan Custom Homes, Inc*, 256 Mich App at 512. The appropriate measure of damages for a breach of contract is that which would place the injured party in as good a position as she would have been in had the promised performance had been rendered. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 98; 443 NW2d 451 (1989). It is appropriate to place before the jury all the facts and circumstances that tend to show a probable amount of damages if the nature of the case only permits an estimation. *Body Rustproofing, Inc v Michigan Bell Tel Co*, 149 Mich App 385, 391; 385 NW2d 797 (1986). Recovery of damages is not precluded for lack of precise proof:

> "[W]here injury to some degree is found, we do not preclude recovery for lack of precise proof. We do the best we can with what we have. We do not, 'in the assessment of damages, require a mathematical precision in situations of injury where, from the very nature of the circumstances precision is unattainable.'" [*Jim-Bob, Inc*, 178 Mich App at 98-99 (citations omitted).]

Plaintiffs sought to recover damages for breach of contract in the amount of $40,000. The evidence showed that plaintiffs' property was landlocked. Defendants Richard and Lois Parry, who granted the express, irrevocable easement benefiting plaintiffs' landlocked property, attempted to block plaintiffs from using the 1999/2000 driveway by cutting down trees and dragging the trees to try to block the driveway. In addition, defendant Richard Parry wrote a letter to plaintiffs forbidding them from trespassing on the 1999/2000 driveway and threatening to charge plaintiffs with criminal trespass if they continued to use his property. There was also evidence that plaintiffs incurred costs of $4,500 to $5,000 for repairs to their vehicle incurred after plaintiff Ann Marie Wright had an accident while using the 1999/2000 driveway. This is the sort of case where mathematical precision regarding damages is not attainable. However, the facts and circumstances clearly establish that plaintiffs were injured by defendants' breach of the easement and/or consent judgment and support a damages award in the amount of $45,000 for breach of contract.

C. CASE EVALUATION SANCTIONS

Defendants argue that the trial court erred in failing to hold an evidentiary hearing to determine the reasonableness of attorney fees sought by plaintiffs as case evaluation sanctions. According to defendants, the fees charged by plaintiffs' attorneys were not consistent and some of the fees were incurred in the separate case brought by plaintiffs against defendants David and Francine Parry.

A party who rejects a case evaluation award is generally subject to sanctions if he fails to improve his position at trial. *Campbell*, 257 Mich App at 198. Under MCR 2.403(O)(1), the opposing party is entitled to "actual costs[.]" "[A]ctual costs" include "a reasonable attorney fee

based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation."

In this case, a case evaluation award of $20,000 was entered in favor of plaintiffs and against defendants.[5] Plaintiffs accepted the award, but defendants rejected it. At trial, the jury awarded plaintiffs breach of contract damages in the amount of $45,000. Thereafter, plaintiffs moved for case evaluation sanctions pursuant to MCR 2.403(O). Plaintiffs sought attorney fees of $275 an hour for 130.09 hours for one attorney and $250 an hour for 23.7 hours for another attorney. In support of their motion for case evaluation sanctions, plaintiffs attached a document that stated the names of the attorneys who worked on the case, their hourly rate, the hours expended, and a calculation of the total fee for each attorney. Plaintiffs also attached a separate document for each attorney detailing the services rendered, including the date the services was rendered, a description of the service, the time expended for each service, and the total hours expended. Defendant Richard Parry filed an in pro per written response to plaintiffs' motion for case evaluation sanctions. In his written response, defendant Richard Parry asserted that some of the costs and attorney fees sought by plaintiffs were "not associated with this action" and requested an evidentiary hearing "to determine what fees are reasonable per MCR 2.403."

Plaintiffs subsequently filed a renewed motion for case evaluation sanctions, attaching the same documentary evidence that was attached to their original motion for case evaluation sanctions. Defendants Richard and Lois Parry did not file a written response to plaintiffs' renewed motion. At the hearing on plaintiffs' renewed motion, defendant Richard Parry, again appearing in pro per, asserted that the attorney costs included some costs associated with the separate complaint that plaintiffs brought against David and Francine Parry. Specifically, he argued that motions that plaintiffs' attorney attended on June 11 and July 2 (he did not specify what year) were associated with plaintiffs' case against defendants David and Francine Parry. He also argued that the hourly rates for plaintiffs' two attorneys were not consistent. Therefore, he again requested an "evidentiary hearing to sort it out and clean it out and decide which really they have rights to, and that the Court would set some kind of a figure that would be reasonable." The trial court did not specifically rule on plaintiffs' request for an evidentiary hearing, but it did not hold an evidentiary hearing and ultimately granted plaintiffs' motion, awarding plaintiffs case evaluation sanctions in the amount of $41,699.75, as well as costs and interest.

"A trial court's decision that an evidentiary hearing is not warranted is reviewed for an abuse of discretion." *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). The party requesting attorney fees bears the burden of proving they were incurred and that they are reasonable. *Reed v Reed*, 265 Mich App 131, 165-166; 693 NW2d 825 (2005). A trial court is not required to hold a hearing to determine the reasonableness of fees if the court has sufficient evidence to determine the amount of attorney fees and costs. *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005).[6] However:

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[5] Defendants correctly note that the case evaluation form incorrectly lists David and Francine Parry as defendants rather than Richard and Lois Parry.

[6] *Fannon* involved sanctions that were imposed under MCL 600.2591 and MCR 2.114, not case
(continued…)

> [w]hen requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services. . . . The trial court may not award attorney fees . . . solely on the basis of what it perceives to be fair or on equitable principles. [*Reed*, 265 Mich App at 166 (citations omitted).]

In this case, defendant Richard Parry contested the requested attorney fees by arguing that fees incurred by plaintiffs' counsel on June 11 and July 2 were associated with plaintiffs' case against defendants David and Francine Parry[7] and that the hourly rates for plaintiffs' counsel were not consistent. He also requested an evidentiary hearing in writing and at the hearing on plaintiffs' motion for case evaluation sanctions. Although he did not specifically argue that the rates themselves were unreasonable or challenge the number of hours plaintiffs claimed the attorneys worked, his challenges are sufficient to require an evidentiary hearing under *Reed*.

Moreover, although this issue is not raised by defendants, we note that the trial court failed to satisfy its obligation to determine the reasonableness of attorney fees in the context of case evaluation sanctions as outlined in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008). In *Smith*, our Supreme Court stated:

> In determining a reasonable attorney fee, a trial court should first determine the fee customarily charged in the locality for similar legal services. In general, the court shall make this determination using reliable surveys or other credible evidence. Then, the court should multiply that amount by the reasonable number of hours expended in the case. The court may consider making adjustments up or down to this base number in light of the other factors listed in *Wood* [*v DAIIE*, 413 Mich 573; 321 NW2d 653 (1982)] and MRPC 1.5(a). In order to aid appellate review, the court should briefly indicate its view of each of the factors. [*Smith*, 481 Mich at 537.]

The factors listed in *Wood* include: "'(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results

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evaluation sanctions imposed under MCR 2.403.

[7] Defendants are correct that case evaluation sanctions would not be appropriate for costs and attorney fees associated with plaintiffs' complaint against defendants David and Francine Parry. The purpose of imposing case evaluation sanctions is "'to place the burden of litigation costs upon the party who insists upon a trial by rejecting a proposed mediation award.'" *Ayre v Outlaw Decoys, Inc*, 256 Mich App 517, 522; 664 NW2d 263 (2003), quoting *Bien v Venticinque*, 151 Mich App 229, 232; 390 NW2d 702 (1986). Such fees must be "for services necessitated by the rejection of the case evaluation." MCR 2.403(O)(6)(b). Any fees associated with plaintiffs' complaint against defendants David and Francine Parry would not have been incurred as a result of defendants' rejection of the case evaluation award in this case.

achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.'" *Wood*, 413 Mich at 588, quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). The factors listed in MRPC 1.5(a) include:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

In this case, the trial court did not make any findings regarding the fee customarily charged in the locality for similar legal services and did not make a determination regarding the reasonable number of hours expended in the case. The trial court also failed to indicate its view of the factors in *Wood* and MRPC 1.5(a).

In light of the trial court's failure to hold an evidentiary hearing on plaintiffs' motion for case evaluation sanctions and failure to comply with *Smith*, we vacate the trial court's order granting plaintiffs case evaluation sanctions under MCR 2.403(O) and remand for the trial court to conduct an evidentiary hearing as required by *Reed* and to make a determination regarding the reasonableness of the fees sought consistent with *Smith*.

Affirmed, in part, and vacated and remanded, in part. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens